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MEMBERS OF NY & CA BARS

February 27, 2019

VIA ECF

Honorable Vera M. Scanlon  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East, 1214 South  
Courtroom 13A-South Wing  
Brooklyn, New York 11201

Re: Monadnock Construction, Inc. v. Westchester Fire Ins.  
Co./Westchester Fire Ins. Co. v. Glasswall, LLC, et al.  
Case No.: \_\_\_\_\_ 16 CIV. 00420 (JBW)(VMS)

Dear Judge Scanlon:

On behalf of third-party defendant Glasswall, LLC I am writing to object to the unauthorized submission by third-party plaintiff Westchester Fire Insurance Co. of a reply argument, denominated as an "addendum," for the reasons set forth in my February 19, 2019 letter to the Court.

If the Court is inclined to consider Westchester Fire's reply, third-party defendant would like to submit a response. For example, the decision relied upon by Westchester Fire (*Deary v. Wyer*, 265 F.2d 804, 809 (2<sup>nd</sup> Cir. 1959)) not only acknowledges that a Court has discretion to dismiss a third-party complaint when the main action has been settled, but also bases its holding on the fact that the third-party defendant in that case did not raise this issue before the District Court and tried the third-party action without objection:

It is true that there are a number of cases holding that a court, just as it has discretion under Rule 14 to implead a third-party, may in its discretion dismiss the third-party complaint. .... But this appeal involves no question as to such

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discretionary power in a trial court. No motion to dismiss was made below and the judge, instead of entering a discretionary dismissal, proceeded to try the third-party claim.

Respectfully yours,

A handwritten signature in black ink, appearing to read "James P. Cinque", written in a cursive style.

JAMES P. CINQUE

JPC:kp

cc: All Counsel (Via ECF)